

REMARKS

The non-final Office Action of January 6, 2009, has been reviewed and these remarks are responsive thereto. Claims 1, 3-8, 16-20, 28, 34-38, 42-46, and 50-51 have been canceled without prejudice or disclaimer, no claims have been amended, and new claims 54-74 have been added. No new matter has been introduced. Claims 9, 11-15, 21, 23-26, 29, 39-41, 47-49, and 52-74 are pending in this application upon entry of the present amendment. Entry of the amendments, reconsideration and allowance of the instant application are respectfully requested.

Rejections Under 35 U.S.C. § 103

Claims 1, 3-9, 11-21, 23-26, 28-29, and 34-53 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Appl. Pub. No. 2003/0026424 (McGarrahan), in view of U.S. Patent Appl. Pub. No. 2003/0018745 (McGowan). Applicants traverse for at least the following reasons.

Independent claim 9 recites an apparatus configured to “run a software agent arranged to identify and copy portions of the primary program that have been earmarked,” and to “store a copy of said earmarked data as an associated secondary program data file.” The Office Action alleges that McGarrahan teaches these features in paragraphs [0084]-[0085], and in paragraphs [0038]-[0039], respectively. Applicants respectfully disagree. The relied-upon portions of McGarrahan describe “tagging” data as content, a trailer, an advertisement, etc., which is discussed in the portion of McGarrahan reproduced below:

Local advertising may also be added in this way. According to the present invention, content, advertising, trailers, etc., are ‘tagged’ at the content server 302 to provide an identity therefor so that the set top box 124 can grab and play the content as requested and the trailers and advertisements on a predetermined schedule. In addition, such ‘tagged’ content allow for profiling of a consumer and targeting of advertisements and content specific to the consumer based on, for example, the type of content previously requested.

McGarrahan, [0038].

Additionally, the Office has previously argued that “the tagging of McGarrahan can be regarded as ‘earmarked’ for marking a feature that the trailer or the advertisement will be displayed

correspondingly to the content which the user is interested to view.” *See* Office Action dated May 27, 2008, page 2.

However, even assuming, without admitting, that in certain contexts the term “tagging” has a similar meaning to the term “earmarking” McGarrahan still not teach or suggest these features of claim 9. McGarrahan only describes tagging an entire file with identifying characteristics of that file (e.g., marking the file as content, a trailer, an advertisement, etc.) so that the file can be identified and retrieved for playing at the proper time. McGarrahan never discloses or even suggests earmarking “portions of a primary program” (emphasis added), nor does it teach or suggest copying “said earmarked data as an associated secondary program data file,” as recited in claim 9. Since McGarrahan only describes tagging entire files, and never discloses earmarking or copying portions of data files, McGarrahan thus fails to teach or suggest, “run[ning] a software agent arranged to identify and copy portions of the primary program that have been earmarked,” and “stor[ing] a copy of said earmarked data as an associated secondary program data file,” as recited in claim 9.

McGowan also fails to teach or suggest earmarking portions of a primary program, or copying the earmarked data as an associated secondary program data file, as recited in claim 9. Accordingly, Applicants submit that claim 9 is not obvious over the purported combination of McGarrahan and McGowan.

Independent claims 21 and 29 are directed respectively to a method and a computer-readable media, both of which recite “run[ning] a software application so as to identify and copy one or more earmarked portions of the stored primary program data,” and “stor[ing] a copy of the earmarked portions as associated secondary program data.” Thus, for similar reasons to those discussed above regarding claim 9, independent claims 21 and 29, are not obvious over the purported combination of McGarrahan and McGowan.

Claims 11-15, 23-26, 39-41, 47-49, and 52-53 depend respectively from claims 9, 21, and 29, and are not obvious over the cited references for at least the reasons discussed above, as well as based on the additional patentable features recited therein.

For example, claims 11 and 23 each recite “replac[ing] at least a portion of audio data in the secondary program data with audio data from tertiary program data received [from] the communication channel.” The Office Action alleges that McGarrahan teaches this feature of

replacing audio data at Figs. 1-3 and in paragraphs [0062]-[0063]. Although these sections describe various audio components, such as an integrated audio controller or a stereo amplifier that may be connected to a set-top box for outputting audio, neither these sections nor any other portion of McGarrah teaches or suggests replacing audio data in a program, as claimed. McGowan similarly fails to teach or suggest these claim features. Accordingly, Applicants submit that claims 11 and 23 are allowable over the cited references for at least this additional reason.

New Claims

Applicants have added new claims 54-74 to more fully claim the invention. No new matter has been added. New independent claims 54, 61, and 68 are respectively directed to a method, apparatus, and a computer readable media, each of which recite, in part:

receiv[ing] primary program data comprising a multimedia broadcast program, said primary program data further comprising earmarking data identifying a plurality of earmarked portions of the multimedia broadcast program;

storing the primary program data in a first data file...;

based on the earmarking data, copying the plurality of earmarked portions of the multimedia broadcast program to a second data file stored separately from the first data file...;

Therefore, for similar reasons to those discussed above regarding claim 9, new independent claims 54, 61, and 68 are allowable over any possible combination of the cited references. New dependent claims 55-60, 62-67, and 69-74 are allowable for at least same reasons as their respective base claims, as well as based on the additional patentable features recited therein.

For example, claims 55, 62, and 69 each recite “replacing at least a portion of audio data in the earmarked portions of the multimedia broadcast program with a separate audio soundtrack,” and claims 56, 63, and 70 further recite, “wherein the separate audio soundtrack is received from a same broadcaster as the primary program data in a separate parallel broadcast.” As discussed above, neither McGarrah nor McGowan, alone or in combination, teaches or suggests replacing the audio data of earmarked portions of program with a separate audio soundtrack. The cited references also fail to teach or suggest that such a separate audio

soundtrack would be "received ... in a separate parallel broadcast," as recited. Accordingly, claims 55-56, 63-64, and 69-70 are allowable for at least this additional reason.

Additionally, claims 60, 67, and 74 each recite "linking the first data file and the second data file by inserting a linking identifier in a file header of at least one of the first data file and the second data file." Neither McGarrah, nor McGowan teaches or suggests the recited feature of linking the separate data files using linking identifiers in file headers. Accordingly, claims 60, 67, and 74 are allowable for at least this additional reason.

Conclusion

Based on the foregoing, Applicants respectfully submit that the application is in condition for allowance and a notice to that effect is earnestly solicited. Should the Examiner believe that anything further is desirable in order to place the application in even better form for allowance, the Examiner is respectfully urged to contact Applicants' undersigned representative at the below-listed number.

Respectfully submitted,
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Dated this 19th day of May, 2009

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